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Filing date: **10/06/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 91222731 |
| Party | Plaintiff Apple Inc. |
| Correspondence Address | GLENN A GUNDERSEN DECHERT LLP CIRA CENTRE, 2929 ARCH ST PHILADELPHIA, PA 19104-2808 UNITED STATES glenn.gundersen@dechert.com, daniel.hope@dechert.com, trademarks@dechert.com |
| Submission | Motion to Suspend for Civil Action |
| Filer's Name | Dale M. Cendali |
| Filer's e-mail | dale.cendali@kirkland.com, claudia.ray@kirkland.com, bonnie.jarrett@kirkland.com |
| Signature | /Dale M. Cendali/ |
| Date | 10/06/2015 |
| Attachments | Apple v Saxon Motion to Suspend.pdf(632678 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

APPLICANT: Saxon Glass Technologies, Inc.

APPLICATION NOS.: 86/397,207 and 86/397,268

FILING DATE: September 17, 2014

MARK: IONEX

Published in Official Gazette: March 10, 2015

| | | |
|--------------------------------|---|-------------------------|
| APPLE INC. |) | |
| |) | |
| |) | |
| <i>Opposer,</i> |) | |
| |) | |
| v. |) | Opposition No. 91222731 |
| |) | |
| SAXON GLASS TECHNOLOGIES, INC. |) | |
| |) | |
| <i>Applicant.</i> |) | |

**MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL ACTION
PURSUANT TO TRADEMARK RULE 2.117(a)**

Opposer Apple Inc. (“Apple”) hereby moves, pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a), for suspension of this proceeding, which relates to Applicant Saxon Glass Technologies, Inc.’s (“Applicant”) applications to register the descriptive term IONEX for certain glass products. Counsel for Apple sought Applicant’s consent to suspend these proceedings; Applicant responded that it does not consent to this request, but did not articulate the reason for its refusal.

Suspension of this proceeding is warranted because a parallel proceeding between the parties currently is pending in the United States District Court for the Western District of New York. Specifically, on June 29, 2015, Applicant filed a complaint (the “Complaint”) against Apple in the United States District Court for the Western District of New York for trademark

infringement, unfair competition and dilution (the “Federal Litigation”). On August 21, 2015, Apple filed its Answer & Affirmative Defenses in response to the Complaint (“Apple’s Answer”). The Complaint and Answer are attached hereto as Exhibits A and B, respectively. Meanwhile, on July 8, 2015, after obtaining an extension of time to do so, Apple opposed the trademark applications that are the subject of this proceeding.

As explained below, a key issue in both this proceeding and the Federal Litigation is whether the terms “Ion-X” and/or IONEX are merely descriptive of glass strengthened with an ion exchange process. Because it would be inefficient and burdensome to conduct discovery in two tribunals at the same time about the same issue, and because the district court’s decision may be binding on the Board, Apple respectfully requests suspension of these proceedings pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a), pending resolution of the Federal Litigation.

I. THE CLAIMS AND DEFENSES IN THIS PROCEEDING

On September 17, 2014, eight days after Apple began using the term “Ion-X” to describe the glass strengthened with an ion exchange process that is used in its Apple Watch product, Applicant filed two intent-to-use applications for IONEX for various glass products. *See* Serial Nos. 86/397,207 and 86/397,268 (the “Applications”). The Applications were published for opposition on March 10, 2015. In order to facilitate the parties’ discussions regarding their respective use of IONEX and “Ion-X,” on April 9, 2015, Apple sought and was granted extensions of time in which to oppose the Applications. The parties were unable to resolve their dispute, however, and on July 8, 2015, Apple filed a Notice of Opposition against both Applications (the “Opposition”).

In its Opposition, Apple argues that registration of the Applications should be refused because IONEX is merely descriptive of the parties’ respective products. *See, e.g.*, Opposition, ¶¶ 13, 15, 16-19, 23. Specifically, Apple alleges that Applicant (like Apple) uses IONEX to

describe glass that has been strengthened with an “ion exchange” process, and that IONEX is merely a shorthand, or contraction, of the phrase “ion exchange.” *See id.*, ¶¶ 2-7, 16. Apple further alleges that, upon information and belief, Applicant does not have “a *bona fide* intent to use IONEX in commerce on or in connection with the goods identified in the [Applications].” *Id.*, ¶¶ 21-22.

Applicant answered the Opposition on August 17, 2015. *See Answer*, dated Aug. 17, 2015 (“Applicant’s Answer”). In Applicant’s Answer, Applicant denied knowledge or information sufficient to form a belief regarding Apple’s assertions that IONEX is a contraction of the phrase “ion exchange” and that IONEX is a descriptive term (*see Applicant’s Answer*, ¶¶ 5, 7) but denied that IONEX is merely descriptive of glass strengthened with an ion exchange process (*see id.*, ¶ 13).

II. THE CLAIMS AND DEFENSES IN THE FEDERAL LITIGATION

In its Complaint in the Federal Litigation, Applicant alleges that Apple’s use of the phrase “Ion-X” in its marketing materials for the Apple Watch, *e.g.*, “The display is protected by strengthened Ion-X glass,” infringes Applicant’s (1) federal trademark Registration No. 2,639,419 for IONEX for “chemical treatment of glass; namely, chemical strengthening of glass by immersion in a molten salt bath;” (2) federal trademark Registration No. 2,639,420 for ION-KLAD for the same service; and (3) alleged common law mark ION-ARMOR for strengthened glass products. *See Ex. A*, ¶¶ 3, 25. Applicant also alleges that Apple’s use of the phrase “Ion-X” dilutes Applicant’s IONEX mark. *See id.*, ¶¶ 52-56. Finally, Applicant asserts state law claims for (1) trademark infringement, (2) dilution, and (3) unfair competition. *See id.*, ¶¶ 57-69.

In its Answer in the Federal Litigation, Apple explains that it uses “Ion-X” only in a descriptive sense to describe glass strengthened with an ion-exchange process, and therefore cannot be held liable for infringement. *See, e.g.*, *Ex. B*, ¶¶ 6, 30-32, 34-36, 38, 56, 72-73, 79.

Apple also asserts that there is no likelihood of confusion between Applicant's IONEX mark for a chemical process and Apple's descriptive use of "Ion-X." *See id.*, ¶ 74, 76. In addition, Apple contends that Applicant's marks are not famous. *See id.*, ¶ 77.

III. THIS PROCEEDING SHOULD BE SUSPENDED

The Federal Litigation encompasses the same issues that are involved in this proceeding, namely whether Applicant is entitled to prevent Apple's use of "Ion-X" to describe glass strengthened with an ion-exchange process. The parties will conduct discovery and the federal court likely will consider issues including, but not limited to, whether "Ion-X" or IONEX is descriptive for glass products, whether Applicant uses IONEX only for a chemical process or also for glass products, and whether Applicant's marks are famous. The determination of the issues in the Federal Litigation therefore is likely to bear on, and potentially could be dispositive of, the issues involved in this proceeding.¹ *See New Orleans La. Saints LLC v. Who Dat? Inc.*, 99 U.S.P.Q.2d 1550, 2011 WL 3381380, at *2 (TTAB 1992) (noting that "[a] decision by the district court may be binding on the Board whereas a determination by the Board as to a [party's] right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court"); *Arcadia Grp. Brands Ltd. v. Studio Moderna SA*, 99 U.S.P.Q.2d 1134, 2011 WL 2695754, at *3 (TTAB 2011) (noting that the Board should "avoid duplication of effort and possible inconsistency in result which would result on the Board being overruled").

Accordingly, because the issues overlap, the necessary discovery in this proceeding and the Federal Litigation will be duplicative, and the district court's decision in the Federal

¹ The fact that the Applications are not specifically mentioned in the Complaint does not change this result. *See Dell Plastics Co. v. Donald F. Duncan, Inc.*, 136 U.S.P.Q. 608, 1963 WL 7803, at *2 (TTAB 1963) (rejecting applicant's argument that "the civil suit can have no bearing on the application here involved since such application . . . is not involved in the court proceeding" and granting motion to suspend opposition proceedings).

Litigation may be binding on the Board, Apple respectfully requests suspension of the Opposition pending resolution of the Federal Litigation, pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a). *See* TBMP § 510.02(a); *Dell Plastics Co. v. Donald F. Duncan, Inc.*, 136 U.S.P.Q. 608, 1963 WL 7803, at *2 (TTAB 1963) (granting motion to suspend opposition proceedings where “the civil action involves the same parties and the same basic issue”); *see also New Orleans La. Saints LLC*, 2011 WL 3381380, at *2 (granting motion to suspend where applicant sued opposer for trademark infringement in federal district court because “the civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board”); *Arcadia Grp. Brands Ltd.*, 2011 WL 2695754, at *3 (granting motion to suspend and noting that “the standard for suspension is not whether the civil action will be dispositive but whether it may have a bearing on the case”); *Gen. Motors Corp. v. Cadillac Club Fashions Inc.*, 22 U.S.P.Q.2d 1933, 1936-37 (TTAB 1992) (granting motion to suspend cancellation proceedings where petitioner filed a complaint in federal court); *Other Tel. Co. v. Conn. Nat’l Tel. Co.*, 181 U.S.P.Q. 125, (TTAB 1974) (granting motion to suspend opposition); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 806-07 (TTAB 1971) (granting motion to suspend cancellation proceedings because action was filed in district court).

Dated: October 6, 2015

Respectfully submitted,

/Dale M. Cendali/

Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022

Attorney for the Opposer
APPLE INC.

CERTIFICATE OF SERVICE

I, Bonnie L. Jarrett, hereby certify that a true and complete copy of the foregoing
MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL ACTION
PURSUANT TO TRADEMARK RULE 2.117(a) has been served on Applicant's counsel by
mailing said copy on October 6, 2015 via Federal Express and via e-mail to:

Patrick R. Delaney
Ditthavong & Steiner, P.C.
44 Canal Center Plaza
Suite 322
Alexandria, VA 22314

Dated: October 6, 2015

/Bonnie L. Jarrett/

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

| | | |
|---------------------------------|---|--------------------------------|
| | : | |
| | : | |
| SAXON GLASS TECHNOLOGIES, INC., | : | |
| | : | Civil Action No. 1:15-cv-00581 |
| Plaintiff, | : | |
| | : | |
| v. | : | COMPLAINT |
| | : | |
| APPLE INC., | : | DEMAND FOR JURY TRIAL |
| | : | |
| Defendant. | : | |
| | : | |
| | : | |
| | : | |

Plaintiff, SAXON GLASS TECHNOLOGIES, INC., brings this action for trademark infringement, dilution and unfair competition against Defendant, APPLE INC., and alleges on knowledge, information and belief as follows:

PARTIES

1. Plaintiff, Saxon Glass Technologies, Inc. (hereinafter “Saxon”) is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Alfred, New York.

2. Defendant Apple, Inc. (hereinafter “Apple”) is a corporation organized and existing under the laws of the State of California and has its principal place of business in Cupertino, California.

NATURE OF ACTION

3. Saxon is a market leading developer and producer of strengthened glass products, and processes relating to their manufacture, under Federal Trademark Registrations

No. 2,639,419 for IONEX[®] (EXHIBIT 1) and No. 2,639,420 ION-KLAD[®] (EXHIBIT 2) and under the unregistered mark for ION-ARMOR (collectively, the “Saxon Marks”). The glass products and processes developed by Saxon under the Saxon Marks have transformed the nature of strengthened glass and they are utilized in a variety of products that rely upon strengthened glass for its resilient properties.

4. Since the 1990s, Saxon has been engaged in producing consistent high-strength glasses and has developed processes for optimized chemical strengthening in which the time and cost of strengthening the glass can be significantly reduced. Saxon has also developed general process and quality control tests to assure a given level of strengthening in the glasses. These include special processes and tests to assure consistent performance and controlled cost of production. Saxon is an acknowledged category leader and a dominant market brand.

5. The Saxon Marks have acquired widespread public recognition, are recognized as indicating source or origin and as a designation of quality and product performance and have substantial goodwill and are important and valuable assets of Saxon. The Saxon Marks are famous and well-known trademarks.

6. Recently, Apple began improperly using the designation “ION-X” as a designation for glass used in connection with the marketing and sale of various devices which are sold through various Apple outlets. The devices include watches incorporating an allegedly strengthened glass. The allegedly strengthened glass in Apple’s watches is identified as “ION-X glass” in their advertising and product description materials. Apple’s present use of the ION-X designation is unauthorized and unlawful, has caused and will continue to cause confusion with Saxon’s registered and unregistered marks; has caused and will cause dilution of the Saxon Marks and has damaged and will continue to damage Saxon.

JURISDICTION AND VENUE

7. This is a complaint for Federal Trademark Infringement, Federal Unfair Competition including False Designation of Origin and False Description, and Federal Dilution arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement), 1125(a) (Unfair Competition, False Designation of Origin and False Description), 1125(c) (Dilution) and for Trademark Infringement, Dilution and Unfair Competition causes of action arising under the statutory and common law of the State of New York and of each other State in which Apple uses the term ION-X in commerce in association with strengthened glass.

8. This Court has original subject matter jurisdiction over infringement of federally registered trademarks and thus this action pursuant to 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over the Defendant because Apple has extensive contacts with, and conducts business within, the State of New York and this judicial district; Apple has caused offending products to be advertised, promoted, and sold in this judicial district; substantial causes of action asserted in this Complaint arise out of Apple's contacts with this judicial district; and because Apple has caused tortious injury to Saxon in this judicial district.

10. Venue is proper in this district under 28 U.S.C. §1391(b)(2), (c)(2) and (d) because Plaintiff Saxon is located in this judicial district, a substantial part of the events or omissions giving rise to the claims occurred in this district, a substantial part of the property that is the subject of the action is situated in this district, the Defendant is subject to this Court's

personal jurisdiction with respect to the civil action in question and the Defendant's contacts with the State of New York are sufficient to subject it to personal jurisdiction.

FACTUAL BACKGROUND

Saxon's Trademarks

11. As early as May 10, 1996, Saxon coined the mark IONEX for its strengthened glass products and launched its IONEX mark by applying it to packaging, invoices and other trade materials for strengthened glass products and shipping the packaged products in interstate commerce. Saxon obtained common law rights to its IONEX mark as early as 1996.

12. Saxon continued using its IONEX mark in association with its glass products and, on January 22, 2002, Saxon filed an application with the United States Patent and Trademark Office ("USPTO") for registration of the word mark "IONEX" in connection with the chemical strengthening of glass by immersion in a molten salt bath.

13. On October 22, 2002, the IONEX mark was placed on the Principal Register at the USPTO as Plaintiff's IONEX registration, U.S. Registration No. 2,639,419 (EXHIBIT 1). The IONEX registration has been in continuous use in commerce by Saxon. Pursuant to § 15 of the Lanham Act (15 U.S.C. § 1065), the IONEX registration has achieved "incontestable" status.

14. Saxon has shipped more than 150 million glass articles under its IONEX mark since its first use in commerce. Plaintiff's goods which have been shipped under the IONEX mark include, among other things, flat glass for interfaces in digital devices, such as smart phones.

15. Through extensive advertising and promotional activities by Saxon of the Plaintiff's goods under the IONEX mark, the IONEX mark has become widely known as

identifying Saxon as the source of its goods.

16. As a result of the distinctiveness of the IONEX mark, Saxon's advertising and promotional activities of its goods as identified by Plaintiff's IONEX mark, the IONEX mark represents and embodies significant and valuable goodwill associated with Saxon's goods.

17. As a result of Saxon's use and registration of the IONEX mark, Saxon has protectable trademark rights in and to the IONEX mark under both federal and state law.

18. As early as December 2, 1998, Saxon coined the mark ION-KLAD for its strengthened glass products and launched its ION-KLAD mark by applying it to packaging, invoices and other trade materials for strengthened glass products and shipping the packaged products in interstate commerce. Saxon obtained common law rights to its ION-KLAD mark as early as 1998.

19. Saxon continued using its ION-KLAD mark in association with its glass products and, on January 22, 2002, Saxon filed an application with the USPTO for registration of the word mark "ION-KLAD" in connection with the chemical strengthening of glass by immersion in a molten salt bath.

20. On October 22, 2002, the ION-KLAD mark was placed on the Principal Register at the USPTO as Plaintiff's ION-KLAD registration, U.S. Registration No. 2,639,420 (EXHIBIT 2). The ION-KLAD registration has been in continuous use in commerce by Saxon. Pursuant to § 15 of the Lanham Act (15 U.S.C. § 1065), the ION-KLAD registration has achieved "incontestable" status.

21. Saxon has shipped more than 300,000 glass articles under its ION-KLAD mark since its first use in commerce.

22. Through extensive advertising and promotional activities by Saxon of the

Plaintiff's goods under the ION-KLAD mark, the ION-KLAD mark has become widely known as identifying Saxon as the source of its goods.

23. As a result of the distinctiveness of the ION-KLAD mark, Saxon's advertising and promotional activities of its goods as identified by the ION-KLAD mark, the ION-KLAD mark represents and embodies significant and valuable goodwill associated with Saxon's goods.

24. As a result of Saxon's use and registration of the ION-KLAD mark, Saxon has protectable trademark rights in and to the ION-KLAD mark under both federal and state law.

25. As early as May 31, 2007, Saxon coined the mark ION-ARMOR for its strengthened glass products and launched its ION-ARMOR mark by advertising and/or applying it to packaging, invoices and other trade materials for strengthened glass products and shipping the packaged products in interstate commerce. Saxon obtained common law rights to its ION-ARMOR mark as early as 2007.

26. Saxon continued using its ION-ARMOR mark in association with its glass products and has shipped substantial quantities of glass articles under its ION-ARMOR mark since its first use in commerce.

27. Through extensive advertising and promotional activities by Saxon and media coverage of the Plaintiff's goods under the ION-ARMOR mark, the ION-ARMOR mark has become widely known as identifying Saxon as the source of its goods.

28. As a result of the distinctiveness of the ION-ARMOR mark, Saxon's advertising and promotional activities and media coverage of its goods as identified by Plaintiff's ION-ARMOR mark, the ION-ARMOR mark represents and embodies significant and valuable goodwill associated with Saxon's goods.

29. As a result of Saxon's use of the ION-ARMOR mark, Saxon has protectable trademark rights in and to the ION-ARMOR mark under both federal and state law.

Apple's Unlawful Use of ION-X

30. On approximately September 9, 2014, Apple announced the "Apple Watch" as coming available for purchase in 2015. On information and belief, at some time coincident or shortly following the initial announcement, Apple began unlawfully using the ION-X mark in its advertising materials for the Apple Watch.

31. On or about April 24, 2015, the Defendant began shipping Apple Watches including watch faces incorporating strengthened glass described as "ION-X glass" by the Defendant.

32. On information and belief, Apple has unlawfully used the ION-X mark to describe strengthened glass covering the watch face of a substantial number of Apple Watches sold and distributed in commerce.

33. Apple's unlawful use includes, but on information and belief is not limited to, such use at web pages accessed through the <https://www.apple.com> URL.

34. At no time has Apple received a license or authorization from Saxon to use the ION-X mark, the IONEX mark or any colorable variation thereof.

35. On or about March 24, April 10, and April 15, 2015, Saxon communicated with Apple and demanded that Apple cease its use of the ION-X mark. Although Apple has acknowledged these communications, Apple has not discontinued its use of the mark.

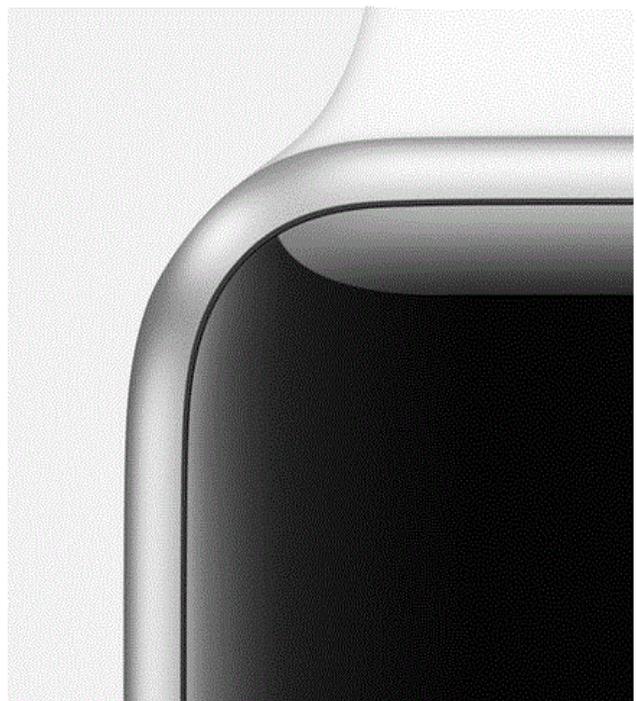
36. Apple is currently using the ION-X mark in connection with the Apple Watch. The use includes a description of the ION-X strengthening process that is also confusingly similar to the strengthening process used by Saxon. The description includes dipping glass into

a molten potassium salt bath to produce the ion exchange associated with chemical strengthening. This is the same process described in the Saxon registrations for IONEX and ION-KLAD.

37. As referenced in Paragraph 36 above, the following is a screenshot of Apple's website at <https://www.apple.com/watch/craftsmanship/> showing the unlawful use by Apple on June 29, 2015:

Ion-X glass.
Strengthened at
the molecular
level.

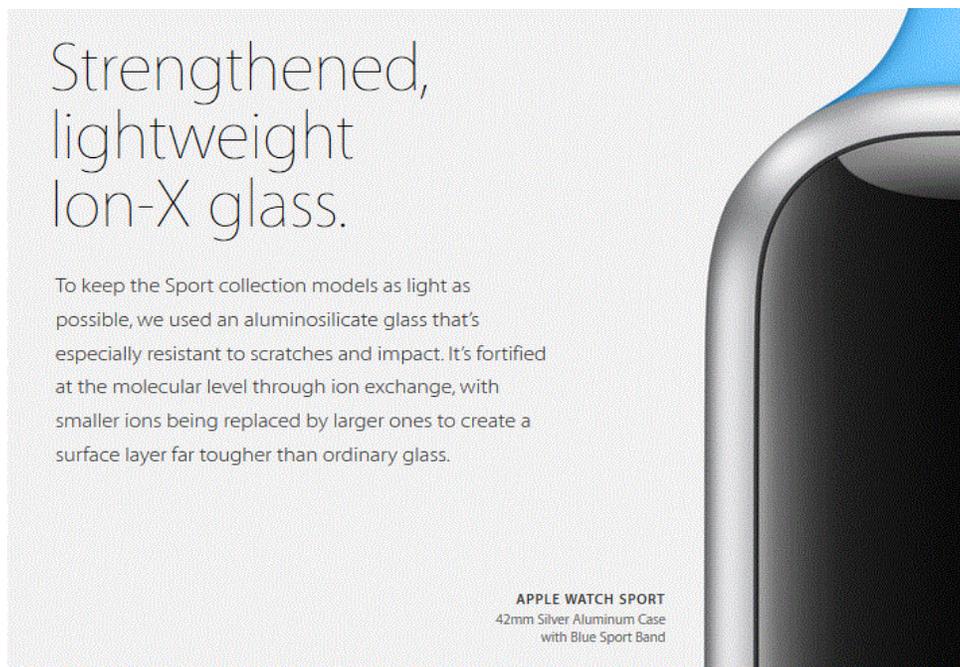
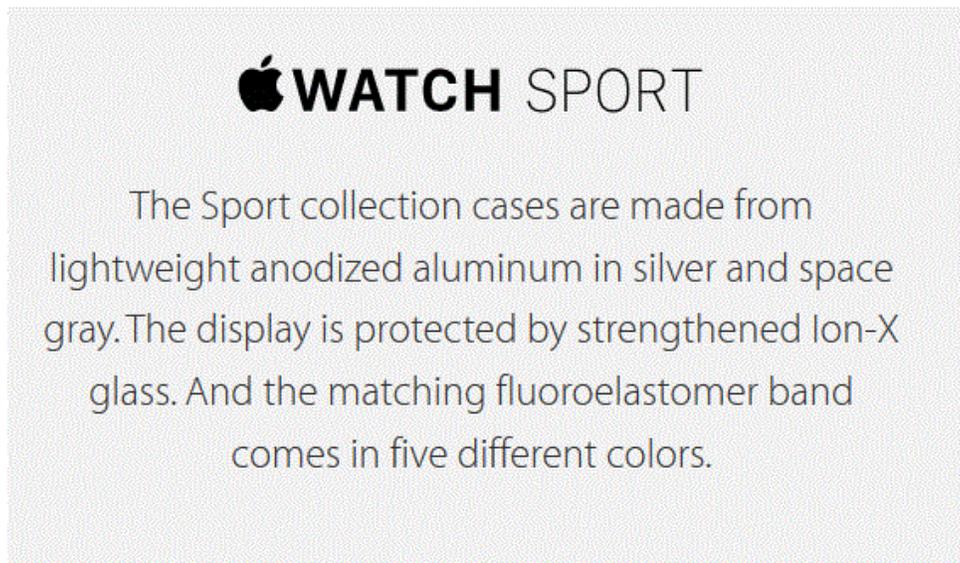
Ion-X glass is the same material used in the windows of space shuttles and high-speed trains. This glass is thin and light, yet surprisingly strong — five times stronger than regular glass. Which made it the perfect choice for Apple Watch Sport. There are many ways to strengthen glass at the surface, but Ion-X glass is hardened down to its molecules. During the manufacturing process, the glass is dipped in a 750-degree molten potassium salt bath. That's when ion exchange takes place, with the smaller sodium ions being removed from the glass and replaced by larger potassium ions. As the glass cools, these larger ions create an extremely hard surface layer that is resistant to scratches and impact.



38. Similar infringing uses by Apple include advertising that describes Apple's "Sport collection" of Apple Watches. The display of the "Sport collection" watches is described by Apple as "...protected by strengthened Ion-X glass..." or "[s]trengthened,

lightweight Ion-X glass”.

39. As referenced in Paragraph 38 above, the following are two screenshots of Apple’s website at showing those specific unlawful uses by Apple on June 29, 2015:



40. Both Saxon’s goods and/or services and Apple’s goods and/or services are similar in nature in that, among other things, they both involve chemically strengthened glasses,

and the chemically strengthened glasses are used in similar ways. Both Saxon and Apple utilize similar channels of trade, including the internet and related social networks, to market, promote and sell their respective goods to the public.

41. Both the Saxon Marks (*i.e.*, IONEX, ION-KLAD and ION-ARMOR) and Apple's ION-X mark are similar in sound, appearance and connotation. Saxon's mark for IONEX is substantially similar, in sound, appearance and connotation, to Apple's ION-X mark.

42. Given the similarities between: a) Saxon's goods/services and Apple's goods/services; b) the Saxon Marks and Apple's ION-X mark; and c) Saxon's channels of trade and Apple's channels of trade, Apple's unlawful use of ION-X is likely to cause confusion, mistake or deception in connection with, and to dilute the distinctiveness of, the Saxon Marks to the damage of Saxon.

43. Apple's actions are in violation of the Lanham Act, New York statutory law and common law and the statutory and common law of each state in which Apple uses the term ION-X in association with strengthened glass. Apple's actions unlawfully trade on the Saxon Marks and the reputation and goodwill associated therewith.

44. Upon information and belief, Apple's unlawful use of ION-X with respect to the Saxon Marks is willful.

45. Apple's unlawful use of ION-X has irreparably harmed Saxon, and Apple's ongoing unlawful use will increase the irreparable harm to Saxon.

46. Granting injunctive relief to Saxon benefits the public interest in upholding Plaintiff's valuable rights in its intellectual property and protects consumers from the deception, confusion and mistake which naturally arise as a result of Apple's unlawful actions.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement; Federal Unfair Competition including False Designation of Origin/False Description - Lanham Act § 43(a), 15 U.S.C. § 1125(a))

47. Saxon repeats and re-alleges each and every allegation of paragraphs 1 through 46 above, and incorporates them by reference as if fully set forth herein.

48. Saxon has used its IONEX trademark since 1996, its ION-KLAD trademark since 1998, and its ION-ARMOR trademark since 2007 to identify its goods and services in New York, in the United States, and worldwide. The general consuming public of the United States widely recognizes the Saxon Marks as designating Saxon as the source of its goods and services.

49. Apple's use of ION-X with respect to the Saxon Marks constitutes a false designation of origin and/or a false or misleading description or representation of fact that is likely to cause confusion, to cause mistake, or to deceive as to (a) the affiliation, connection, or association of Apple with Saxon and/or (b) the origin, sponsorship, or approval of Apples' goods, services, or commercial activities by Saxon. For example, consumers of glass articles, such as electronic devices with chemically strengthened glass interfaces, are likely to be confused as to whether Apple's watch is sponsored or approved by Saxon or Apple is merely a conduit for Saxon's chemically strengthened glass products or products made by the Saxon processes.

50. Apple's wrongful activities have caused Saxon irreparable injury. Saxon is informed and believes that unless said conduct is enjoined by this Court, Apple will continue and expand those activities to the continued and irreparable injury of Saxon. This injury includes a reduction in the distinctiveness of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and injury to Saxon's reputation that cannot be remedied through damages, and

Saxon has no adequate remedy at law. Saxon is entitled to preliminary and permanent injunctions pursuant to 15 U.S.C. § 1116 restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark.

51. Pursuant to 15 U.S.C. § 1117, Saxon is also entitled to recover (i) Apple's profits, (ii) Saxon's ascertainable damages, and (iii) Saxon's costs of suit. Apple's willful use of the ION-X mark as a colorable imitation of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks without excuse or credible justification renders this an exceptional case and entitles Saxon to its reasonable attorney fees.

SECOND CAUSE OF ACTION

(Federal Dilution - Lanham Act § 43(c), 15 U.S.C. § 1125(c))

52. Saxon repeats and re-alleges each and every allegation of paragraphs 1 through 51 above, and incorporates them by reference as if fully set forth herein.

53. Saxon's IONEX mark is famous and distinctive, and that mark became famous prior to Apple's commencement of using the ION-X mark.

54. Apple's existing and future use of the ION-X mark for its Apple products and services are likely to cause dilution by blurring or dilution by tarnishing of the Saxon IONEX mark. For example, Apple's use of the ION-X mark is likely to reduce the distinctiveness of the IONEX mark by reducing the general consuming public's association of the mark with Saxon's goods and/or services.

55. Apple's wrongful activities have caused Saxon irreparable injury. Saxon is informed and believes that unless said conduct is enjoined by this Court, Apple will continue and expand those activities to the continued and irreparable injury of Saxon. This injury

includes a reduction in the distinctiveness of Saxon's IONEX mark and injury to Saxon's reputation that cannot be remedied through damages, and Saxon has no adequate remedy at law. Saxon is entitled to preliminary and permanent injunctions pursuant to 15 U.S.C. §§ 1116 and 1125(c)(1) and (5) restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark as a colorable imitation of Saxon's IONEX mark.

56. Apple's first use of the ION-X mark occurred, on information and belief, after August 2014. Apple willfully intended to trade on the recognition of the IONEX mark and/or willfully intended to harm the reputation of the IONEX mark. Pursuant to 15 U.S.C. §§ 1117 and 1125(c)(5), Saxon is also entitled to recover (i) Apple's profits, (ii) Saxon's ascertainable damages, and (iii) Saxon's costs of suit. Apple's willful use of the ION-X mark as a colorable imitation of Saxon's IONEX mark without excuse or credible justification renders this an exceptional case and entitles Saxon to its reasonable attorney fees.

THIRD CAUSE OF ACTION

(Trademark Infringement – State Common Law and Statutory Law)

57. Saxon repeats and re-alleges each and every allegation of paragraphs 1 through 56 above, and incorporates them by reference as if fully set forth herein.

58. The general consuming public of New York and other States widely recognizes the Saxon Marks as designating Saxon as the source of goods and/or services. Saxon has common law trademark rights in the Saxon Marks under New York law and under the statutory and common laws of other States.

59. Apple's wrongful activities in the State of New York and in other States have caused Saxon irreparable injury. Saxon is informed and believes that unless said conduct is

enjoined by this Court, Apple will continue and expand those activities to the continued and irreparable injury of Saxon. This injury includes a reduction in the distinctiveness of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and injury to Saxon's reputation that cannot be remedied through damages, and Saxon has no adequate remedy at law. Saxon is entitled to preliminary and permanent injunctions restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark.

60. Saxon is also entitled to recover (i) Apple's profits, (ii) Saxon's ascertainable damages, and (iii) Saxon's costs of suit. Apple's willful use of the ION-X mark as a colorable imitation of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks without excuse or credible justification renders this an exceptional case and entitles Saxon to its reasonable attorney fees.

FOURTH CAUSE OF ACTION

(Dilution – State Common Law and Statutory Law)

61. Saxon repeats and re-alleges each and every allegation of paragraphs 1 through 60 above, and incorporates them by reference as if fully set forth herein.

62. Apple's existing and future use of the ION-X mark for its Apple products and services in New York and in other States (i) has diluted, and on information and belief will continue to dilute, the distinctive quality of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and/or (ii) has tarnished, and on information and belief will continue to tarnish, the image of the Saxon Marks, in violation of Section 360-L of the New York General Business Law, New York common law and the statutory and common law of other States.

63. Apple's wrongful activities in the State of New York and in other States have

caused Saxon irreparable injury. Saxon is informed and believes that unless said conduct is enjoined by this Court, Apple will continue and expand those activities to the continued and irreparable injury of Saxon. This injury includes a reduction in the distinctiveness of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and injury to Saxon's reputation that cannot be remedied through damages, and Saxon has no adequate remedy at law. Saxon is entitled to preliminary and permanent injunctions restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark.

64. Saxon is also entitled to recover (i) Saxon's ascertainable damages, and (ii) Saxon's costs of suit, including its reasonable attorney fees.

FIFTH CAUSE OF ACTION

(Unfair Competition – State Common Law and Statutory Law)

65. Saxon repeats and re-alleges each and every allegation of paragraphs 1 through 64 above, and incorporates them by reference as if fully set forth herein.

66. Apple's acts, as alleged above, constitute unlawful and/or unfair trade practices in violation of New York common law and under the statutory and common law of other States.

67. Apple's existing and future use of the ION-X mark for its Apple Watch products and services in New York and in other States (i) is likely to confuse consumers as to the source, origin or affiliation of Apple's goods or services (ii) has diluted, and on information and belief will continue to dilute, the distinctive quality of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and/or (iii) has tarnished, and on information and belief will continue to tarnish, the image of the Saxon Marks, in violation of New York common law and the statutory

and common law of other States.

68. Apple's acts of unfair competition in the State of New York and in other States have caused Saxon irreparable injury. Saxon is informed and believes that unless said conduct is enjoined by this Court, Apple will continue and expand those activities to the continued and irreparable injury of Saxon. This injury includes a reduction in the distinctiveness of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks and injury to Saxon's reputation that cannot be remedied through damages, and Saxon has no adequate remedy at law. Saxon is entitled to preliminary and permanent injunctions restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark.

69. As a direct and proximate result of Apple's unlawful unfair competition, Apple has been unjustly enriched in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Saxon hereby requests that this Court:

- A. Enter preliminary and permanent injunctions, pursuant to 15 U.S.C. § 1116 and/or New York law and/or the laws of other States, restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the ION-X mark, or any other colorable imitation or confusingly similar variation of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks that is likely to cause confusion, mistake, deception or public misunderstanding as to the origin of Saxon's products or services or their connectedness to Defendant;

- B. Enter preliminary and permanent injunctions, pursuant to 15 U.S.C. § 1116 and/or New York law and/or the laws of other States, requiring Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, to immediately cease from causing any and all dilution and/or tarnishment of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks;
- C. Require the Defendant to file with the Court and serve upon Saxon within thirty (30) days after entry of the preliminary and permanent injunctions, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the preliminary and permanent injunctions;
- D. Award Saxon, pursuant to 15 U.S.C. § 1117 and/or New York law and/or the laws of other States, its ascertainable damages, costs, and attorney's fees, including treble its actual damages pursuant to 15 U.S.C. § 1117(a);
- E. Award Saxon, pursuant to 15 U.S.C. § 1117 and/or New York law and/or the laws of other States, Apple's profits attributable to Apple's unauthorized use of the ION-X mark;
- F. Compel the Defendant, pursuant to 15 U.S.C. § 1117, to account to Saxon for any and all profits derived by Apple from its unlawful acts complained of herein;
- G. Impose a constructive trust in favor of Saxon on all profits obtained from Apple's misappropriation of Saxon's IONEX, ION-KLAD and/or ION-ARMOR marks;
- H. Order the Defendant, pursuant to 15 U.S.C. § 1118, to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising,

promotional material or the like in possession, custody or under the control of Defendant bearing a trademark found to infringe Saxon's trademark rights, as well as plates, matrices, and other means of making the same;

- I. Award Saxon all amounts by which Apple has been unjustly enriched through its use of the ION-X mark;
- J. Declare this to be an exceptional case and award Saxon its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117; and
- K. Award Saxon any further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Saxon respectfully requests a jury trial on all issues triable thereby.

Respectfully submitted,

DATED: June 29, 2015

DITTHAVONG & STEINER, P.C.

/s/ Brian M. Taddonio

Brian M. Taddonio

btaddonio@dcpatent.com

Joseph J. Zito, *pro hac vice pending*

jzito@dcpatent.com

Patrick R. Delaney, *pro hac vice pending*

pdelaney@dcpatent.com

44 Canal Center Plaza, Suite 322

Alexandria, Virginia 22314

Telephone: (703) 519-9951

Facsimile: (703) 519-9958

Attorneys for Plaintiff

SAXON GLASS TECHNOLOGIES, INC.

EXHIBIT B

Eric J. Ward
WARD GREENBERG HELLER & REIDY LLP
1800 Bausch & Lomb Place
Rochester, New York 14604-2713

Dale Cendali (admission pending)
Claudia Ray (admission pending)
Bonnie L. Jarrett (admission pending)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022

Attorneys for Defendant
APPLE INC.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

SAXON GLASS TECHNOLOGIES,

Plaintiff,

- against -

APPLE INC.,

Defendant.

Case No. 1:15-cv-00581

ECF Case

**ANSWER & AFFIRMATIVE DEFENSES
OF APPLE INC.**

Defendant, Apple Inc. (hereinafter “Apple”), by and through its undersigned attorneys, answers the Complaint of Plaintiff Saxon Glass Technologies (“Plaintiff”) in this action as follows:

PARTIES

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 1 of the Complaint and therefore denies the same.

2. Denies the allegations contained in ¶ 2 of the Complaint, except admits that Apple Inc. has offices in Cupertino, California, and its name is “Apple Inc.,” without a comma between “Apple” and “Inc.”

NATURE OF ACTION

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 3 of the Complaint and therefore denies the same, except admits that Exhibits 1 and 2 to the Complaint appear to contain federal trademark registrations Nos. 2,639,419 and 2,639,420, which documents speak for themselves.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 4 of the Complaint and therefore denies the same.

5. States that the allegations set forth in ¶ 5 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 5 of the Complaint and therefore denies the same.

6. Denies the allegations contained in the first through third sentences of ¶ 6 of the Complaint, except admits that Apple markets and sells versions of the Apple Watch, and further admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process; and states that the allegations contained in the fourth sentence ¶ 6 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

JURISDICTION AND VENUE

7. States that the allegations contained in ¶ 7 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, admits that Plaintiff purports to assert claims based on 15 U.S.C. §§ 1114(1), 1125(a), and 1125(c) and the common law of the State of New York and unspecified other states, but denies the merits and sufficiency of the claims asserted in the Complaint.

8. States that the allegations contained in ¶ 8 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, admits that this Court has subject matter jurisdiction as to Plaintiff's claims.

9. States that the allegations contained in ¶ 9 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same, except admits that this Court has personal jurisdiction over Apple.

10. States that the allegations contained in ¶ 10 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same, except admits that venue is proper in this district.

FACTUAL BACKGROUND

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of ¶ 11 of the Complaint and therefore denies the same; and states that the allegations contained in the second sentence of ¶ 11 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 12 of the Complaint and therefore denies the same.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in the first and second sentences of ¶ 13 of the Complaint and therefore denies the same, except admits that Exhibit 1 to the Complaint appears to contain federal trademark Registration No. 2,639,419, which document speaks for itself; and states that the allegations contained in the third sentence of ¶ 13 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies knowledge or

information sufficient to form a belief as to the allegations contained in the third sentence of ¶ 13 of the Complaint and therefore denies the same.

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 14 of the Complaint and therefore denies the same.

15. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 15 of the Complaint and therefore denies the same.

16. States that the allegations contained in ¶ 16 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 16 of the Complaint and therefore denies the same.

17. States that the allegations contained in ¶ 17 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

18. Denies knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of ¶ 18 of the Complaint and therefore denies the same; and states that the allegations contained in the second sentence of ¶ 18 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

19. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 19 of the Complaint and therefore denies the same.

20. Denies knowledge or information sufficient to form a belief as to the allegations contained in the first and second sentences of ¶ 20 of the Complaint and therefore denies the same, except admits that Exhibit 2 to the Complaint appears to contain federal trademark Registration No. 2,639,420, which document speaks for itself; and states that the allegations

contained in the third sentence of ¶ 20 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies knowledge or information sufficient to form a belief as to the allegations contained in the third sentence of ¶ 20 of the Complaint and therefore denies the same.

21. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 21 of the Complaint and therefore denies the same.

22. States that the allegations contained in ¶ 22 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

23. States that the allegations contained in ¶ 23 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

24. States that the allegations contained in ¶ 24 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

25. Denies knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of ¶ 25 of the Complaint and therefore denies the same; and states that the allegations contained in the second sentence of ¶ 25 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

26. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 26 of the Complaint and therefore denies the same.

27. States that the allegations contained in ¶ 27 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies

knowledge or information sufficient to form a belief as to the allegations contained in ¶ 27 of the Complaint and therefore denies the same.

28. States that the allegations contained in ¶ 28 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 28 of the Complaint and therefore denies the same.

29. States that the allegations contained in ¶ 29 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

30. Denies the allegations contained in ¶ 30 of the Complaint, except admits that Apple first publicly announced the Apple Watch at a press event on September 9, 2014, and further admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

31. Denies the allegations contained in ¶ 31 of the Complaint, except admits that Apple began shipping orders of Apple Watches to consumers on or about April 24, 2015, and further admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

32. Denies the allegations contained in ¶ 32 of the Complaint, except admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

33. Denies the allegations contained in ¶ 33, except admits that Apple markets its Apple Watch products on various webpages located at the domain name <http://www.apple.com>.

34. Denies the allegations contained in ¶ 34 of the Complaint, except admits that Apple is not required to obtain a license or authorization from Plaintiff to use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

35. Denies the allegations contained in ¶ 35 of the Complaint, except admits that counsel for Plaintiff sent Apple a letter on March 24, 2015, which letter speaks for itself; further admits that outside counsel for Plaintiff exchanged emails with Apple’s outside counsel on April 9, 2015, which emails speak for themselves; further admits that the parties’ outside counsel spoke by telephone on April 13, 2015 and April 15, 2015; and further admits that the marketing materials for the Sport version of the Apple Watch continue to use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

36. Denies the allegations contained in the first through third sentences of ¶ 36 of the Complaint, except admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process; and denies knowledge or information sufficient to form a belief as to the allegations contained in the fourth sentence of ¶ 36 of the Complaint and therefore denies the same.

37. Denies the allegations contained in ¶ 37 of the Complaint, except admits that ¶ 37 appears to contain an image excerpted from the webpage located at the URL <https://www.apple.com/watch/craftsmanship/>, which webpage speaks for itself.

38. Denies the allegations contained in ¶ 38 of the Complaint, except admits that the marketing materials for the Sport version of the Apple Watch use the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

39. Denies the allegations contained in ¶ 39 of the Complaint, except admits that ¶ 39 appears to contain images excerpted from the webpage located at the URL <http://www.apple.com/watch/apple-watch-sport/>, which webpage speaks for itself.

40. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 40 of the Complaint and therefore denies the same, except admits that the Sport version of the Apple Watch includes a glass strengthened with an ion-exchange process, and further admits that Apple offers the Apple Watch online and in retail stores.

41. Denies the allegations contained in ¶ 41 of the Complaint.

42. States that the allegations contained in ¶ 42 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

43. States that the allegations contained in ¶ 43 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

44. States that the allegations contained in ¶ 44 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

45. States that the allegations contained in ¶ 45 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

46. States that the allegations contained in ¶ 46 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

FIRST CAUSE OF ACTION

47. Repeats and incorporates herein its responses to ¶¶ 1–46 of the Complaint as set forth above as if repeated here in their entirety.

48. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 48 of the Complaint, and therefore denies the same.

49. States that the allegations contained in ¶ 49 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

50. States that the allegations contained in ¶ 50 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

51. States that the allegations contained in ¶ 51 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

SECOND CAUSE OF ACTION

52. Repeats and incorporates herein its responses to ¶¶ 1–51 of the Complaint as set forth above as if repeated here in their entirety.

53. States that the allegations contained in ¶ 53 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

54. States that the allegations contained in ¶ 54 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

55. States that the allegations contained in ¶ 55 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

56. Denies the allegations contained in the first and second sentences of ¶ 56 of the Complaint, except admits that Apple first used the descriptive short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process in or about September 2014; and states that the allegations contained in the third and fourth sentences of ¶ 56 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

THIRD CAUSE OF ACTION

57. Repeats and incorporates herein its responses to ¶¶ 1–56 of the Complaint as set forth above as if repeated here in their entirety.

58. States that the allegations contained in ¶ 58 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

59. States that the allegations contained in ¶ 59 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

60. States that the allegations contained in ¶ 60 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

FOURTH CAUSE OF ACTION

61. Repeats and incorporates herein its responses to ¶¶ 1–60 of the Complaint as set forth above as if repeated here in their entirety.

62. States that the allegations contained in ¶ 62 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

63. States that the allegations contained in ¶ 63 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

64. States that the allegations contained in ¶ 64 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

FIFTH CAUSE OF ACTION

65. Repeats and incorporates herein its responses to ¶¶ 1–64 of the Complaint as set forth above as if repeated here in their entireties.

66. States that the allegations contained in ¶ 66 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

67. States that the allegations contained in ¶ 67 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

68. States that the allegations contained in ¶ 68 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

69. States that the allegations contained in ¶ 69 of the Complaint are conclusions of law as to which no response is necessary, but that to the extent any response is required, denies the same.

70. Any allegation not specifically admitted herein is denied.

AFFIRMATIVE DEFENSES

71. As a world-famous brand and the owner of an extensive portfolio of intellectual property assets, Apple both values its own intellectual property rights and respects the intellectual property rights of others.

72. On September 9, 2014, Apple publicly announced its Apple Watch products. Apple uses the short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process that is used in the Sport Version of the Apple Watch, just as Apple uses terms such as “Classic Buckle,” “Leather Loop,” “Modern Buckle,” “Link Bracelet,” “Milanese Loop,” “Sport Band,” which also appear in Apple’s marketing materials for the Apple Watch.

73. Because Apple’s use of the short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process is a fair use, Plaintiff’s claims must fail.

74. Plaintiff’s claims must also fail because there is no likelihood of confusion between Plaintiff’s IONEX mark for a chemical process and Apple’s descriptive use of “Ion-X” as a short-hand term for glass strengthened with an ion-exchange process.

FIRST DEFENSE

75. The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

76. There is no likelihood of confusion, mistake, or deception based on Apple’s use of the short-hand term “Ion-X” to describe glass strengthened with an ion-exchange process.

THIRD DEFENSE

77. Plaintiff’s marks are not famous.

FOURTH DEFENSE

78. There is no likelihood of dilution.

FIFTH DEFENSE

79. Plaintiff’s claims are barred in whole or in part by the fair use defense.

SIXTH DEFENSE

80. Plaintiff's claims are barred in whole or in part by the doctrines of laches, acquiescence, estoppel, and unclean hands.

Dated: New York, New York
August 21, 2015

/s Eric J. Ward

Eric J. Ward
WARD GREENBERG HELLER
& REIDY LLP
1800 Bausch & Lomb Place
Rochester, New York 14604-2713

Dale Cendali*
dale.cendali@kirkland.com
Claudia Ray*
claudia.ray@kirkland.com
Bonnie L. Jarrett*
bonnie.jarrett@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
*admission pending

Attorneys for Defendant
APPLE INC.